REMARKS

Double-Patenting Rejections

In the Office Action dated May 13, 2008, pending claims 1-57 are provisionally rejected on the grounds of non-statutory obviousness-type double patenting over claims 1-56 of co-pending Application No. 10/713,763. A terminal disclaimer is being filed along with this response to overcome this provisional rejection.

Pending claims 1-57 were also rejected on the ground of non-statutory obviousness-type double patenting over claims 1-48 of co-pending Application No. 10/719,811. Applicant notes that the referenced application has been abandoned, rendering moot the grounds for this rejection. This provisional rejection should be withdrawn.

Claim Rejections – 35 U.S.C. § 102

Claims 31-35, 38-46, and 49-57 are rejected under the present Office Action as allegedly anticipated by Chih-Lin et al. (EP 0767548 A2). However, the cited portions of Chih-Lin fail to disclose a method that includes "determining an achievable data rate for each of a plurality of mobile stations <u>based on a reverse link path loss of the mobile station and a maximum transmit power</u>" as required by independent claim 31. Further, the cited portions of Chih-Lin fail to disclose "calculating a priority value … based on the achievable data rate" or "generating reverse link data rate control decisions … based on … [the] priority values," as further recited by independent claim 31. Independent apparatus claim 44 includes similar limitations. As detailed further, below, the rejection of these claims and their dependent claims 32-35, 38-43, 45-46, and 49-57 are improper for at least these reasons.

In several of the claimed embodiments of the present invention, a network base station determines "an achievable data rate for each of a plurality of mobile stations based on a reverse link path loss of the mobile station and a maximum transmit power of the mobile station." For

example, as the specification explains, "the base station can be configured to calculate the achievable rate according to Shannon's Capacity Theorem based on a Signal-to-Interference-and-Noise Ratio (SINR) that could be achieved by the mobile station given its maximum transmit power and its reverse link path loss." (Specification ¶ [0010].) Accordingly, independent method claim 31 and apparatus claim 44 each recite the determination of "an achievable data rate for each of a plurality of mobile stations based on a reverse link path loss of the mobile station and a maximum transmit power of the mobile station."

In rejecting claims 31 and 44, the Office Action cites a portion of Chih-Lin describing an "Enhanced Autonomous Access Control" system. (Chih-Lin, col. 11 line 42 – col. 12 line 50.) In fact, Chih-Lin does not disclose "determining an achievable data rate" for a mobile station as claimed in the present application. Indeed, the cited portions of Chih-Lin are absolutely silent with respect to a maximum transmit power of a mobile station, or with respect to a reverse link path loss for a mobile station. Instead, Chih-Lin describes a reverse link rate control method in which pilot strength measurements made at a mobile station are compared to pre-determined thresholds to determine a rate "multiplier" for the mobile station. These rate multipliers do not represent an achievable data rate for the mobile station, rather, they indirectly reflect rates above which excessive interference in neighboring cells may occur. (See Chih-Lin, col. 12 lines 19-22.) Because Chih-Lin does not disclose the determination of an achievable data rate for a mobile station, the cited reference is necessarily silent with respect to calculating priority values based on achievable data rates and with respect to generating rate control commands based on the calculated priority values. In short, the cited portions of Chih-Lin fail to disclose any of the features of independent claims 31 and 44.

The rejections of independent claims 31 and 44, as well as their dependent claims, is improper for at least the above reasons, and should be withdrawn. Furthermore, the rejections of several of the dependent claims are improper for additional reasons. For instance, claim 32

recites that maximum transmit power information for mobile stations is received at a base station. Claim 33 recites that a default maximum power value is used as the maximum transmit power for one or more mobile stations. The Office Action alleges that these features are disclosed in Chih-Lin at col. 12, lines 1-50 – this is simply incorrect, as Chih-Lin makes no mention of mobile station transmitter power at all. Similarly, claims 34, 35, 45, and 46 recite that an achievable data rate for a mobile station may be calculated according to Shannon's Capacity Theorem, based on an SINR that could be achieved by the mobile station given its maximum transmit power and its reverse link path loss. Again, the Office Action alleges that this feature is disclosed by Chih-Lin at col. 12, lines 1-50 – again, this is simply false. As noted, Chih-Lin is silent with respect to a mobile station's maximum transmit power. Further, Chih-Lin describes no calculation of achievable data rate whatsoever, and certainly does not describe such a calculation based on Shannon's Theorem.

Conclusion

An appropriate terminal disclaimer has been submitted to overcome one of the pending provisional double-patenting rejection, while the other double-patenting rejection is rendered moot by the abandonment of the subject application. For the reasons given above, the remaining rejections under 35 U.S.C. § 102 are improper and should be withdrawn. Applicant therefore respectfully reconsideration of the present application and allowance of the pending claims.

Respectfully submitted,
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